



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220919-0193]

RTID 0648-XC610

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category January through March Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 20.5 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the General category December 2023 subquota to the January through March 2023 subquota period. The adjusted General category January through March 2023 subquota is 58.2 mt. This action is provides further opportunities for General category fishermen to participate in the January through March General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments.

This action would affect Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective January 3, 2023, through March 31, 2023.

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SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA;

16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The baseline General category quota is 710.7 mt. The General category baseline subquotas for the January through March time-period and for the December time-period are 37.7 mt and 37.0 mt, respectively. In this action, NMFS is transferring 20.5 mt from the December 2023 subquota period to the January through March subquota period. This transfer results in 58.2 mt ($37.7 \text{ mt} + 20.5 \text{ mt} = 58.2 \text{ mt}$) being available for the January through March 2023 subquota period and 16.5 mt ($37.0 - 20.5 = 16.5 \text{ mt}$) being available for the December 2023 subquota period.

Transfer from the December 2023 Subquota to the January through March 2023 Subquota

Under § 635.27(a)(1)(ii), NMFS has the authority to transfer subquota from one time period to another time period through inseason action after considering determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These considerations include, but are not limited to, the following.

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock

(§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered recent catches of the General category quota (including in December 2022 and during the January through March fishery in the last several years) and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Without a quota transfer from the December 2023 subquota period, the quota available for the 2023 January through March period would be 37.7 mt and participants would have to stop BFT fishing activities once that amount is met, while commercial-sized BFT remain available in the areas where General category permitted vessels operate. A quota transfer of 20.5 mt would provide limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the General category quota to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS may adjust each period's subquota based on overharvest or underharvest in the prior period and may transfer subquota from one time period to another time period. By allowing for such quota adjustments and transfers, NMFS anticipates that the General category quota would be used before the end of the fishing year. For 2022, NMFS transferred 19.5 mt of quota from the December 2022 subquota period to the January through March 2022 subquota period, resulting in an adjusted subquota of 49 mt for the January through March 2022 period and an adjusted subquota of 9.4 mt for the December 2022 period (86 FR 72857,

December 23, 2021). NMFS also made a transfer of 26 mt from the Reserve to the General category effective January 28, 2022, resulting in an adjusted subquota of 75 mt for the January through March 2022 period (87 FR 5737, February 2, 2022), and closed the General category fishery for the January through March subquota period effective February 11, 2022 (87 FR 8432, February 15, 2022).

NMFS also considered the estimated amounts by which quotas for other gear categories of the BFT fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2023 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2023 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the 2006 Consolidated FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations (established in Recommendation 21-07), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and its amendments, including to achieve optimum yield on a continuing basis and to allow all

permit categories a reasonable opportunity to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunities equitably across all time periods.

Given these considerations, NMFS is transferring 20.5 mt from the December 2023 period to the January through March 2023 period, resulting in an adjusted January through March 2023 subquota of 58.2 mt and an adjusted December 2023 subquota of 16.5 mt. The General category fishery will remain open until March 31, 2023, or until the adjusted General category quota is reached, whichever comes first.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General category and HMS Charter/Headboat vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or the end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access *hmspermits.noaa.gov*, for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing prior notice and opportunity for public comment on this quota transfer for the January through March 2023 time period is impracticable. NMFS could not have proposed this action earlier, as it needed to consider and respond to updated landings data, including the recently available December 2022 data, in deciding to transfer a portion of the December 2023 subquota to the January through March 2023 subquota. Delaying this action is contrary to public interest, not only because it would likely result in a General category closure and associated costs to the fishery, but also administrative costs due to further agency action needed to re-open the fishery after quota is transferred. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds that might otherwise become unavailable during a delay. This action does not raise conservation and management concerns. Transferring quota within the General category does not affect the overall U.S. BFT quota, and the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA finds that pursuant to 5 U.S.C. 553(d), there

also is good cause to waive the 30-day delay in effective date.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 30, 2022.

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